IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5283 of 2000
with
SPECIAL CIVIL APPLICATION NO.9112 OF 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HEMANTBHAI KHODABHAI UP SARPANCH

Versus

STATE OF GUJARAT, THROUGH SECRETARY

Appearance:
MR HARIN P RAVAL for Petitioner
GOVERNMENT PLEADER for Respondent No. 1
MR HS MUNSHAW for Respondent No. 3
MS ROOPAL R PATEL for Respondent No. 5

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 19/09/2000

ORAL JUDGEMENT

Rule. Mr.K.T.Dave, Ld.AGP for respondent No.1, Mr.H.S,Munshaw for respondent No.3 and Ms.Roopal R.Patel

for respondent No.5 waive service of rule.

2. In this petition under Article 226 of the Constitution of India, the petitioner has challenged the order dated 29.5.2000 passed by the Joint Secretary, Panchayat, Rural Housing and Rural Development Department, State of Gujarat under section 259 of the Gujarat Panchayats Act, 1993 (hereinafter referred to as "the Act").

3. The petitioner in Special Civil Application No.9112/2000 was elected as Sarpanch of Baldana village Panchayat. Baldana Gram Panchayat has total 8 members including Sarpanch. At the relevant time, i.e. in January 2000 two seats of members were vacant and, therefore, in all there were six members including the Sarpanch. On 31.1.2000 Motion for No Confidence against the Sarpanch was moved. Meeting was held on 8.2.2000. Meeting was attended by four persons all claiming to be the members of the Gram Panchayat and they passed a resolution for No confidence against the Sarpanch. On 7.3.2000 The sarpanch, i.e. Marghaben filed appeal before the Taluka Development Officer under section 249 of the Act challenging the purported resolution dated 8.2.2000. The dispute raised by Marghaben was to the effect that one of the four persons claiming to be the members of the Gram Panchayat Dalsukhbhai had already tendered his resignation and she had accepted the resignation well before 8.2.2000 and, therefore, the purported resolution was passed by only three persons and there was no requisite majority of six. The total number of seats in the Panchayat was eight and the resolution was required to be passed by 2/3rd majority of the total members as per the sanctioned strength. The Taluka Development Officer passed order dated 23/27.3.2000 rejecting the appeal of Marghaben after repelling both the contentions. The Taluka Development Officer held that Dalsukhbhai can not be said to have resigned as he had given two resignations on two different dates and the original resignation did not appear to have been presented before the Gram Panchayat Office. The Taluka Development Officer further held that out of sanctioned strength of 8 members there were two vacancies and therefore only six total members were there. Accordingly, passing of no confidence motion by four members was in conformity with the requirement of Section 56(2) of 2/3rd majority of total number of persons. Aggrieved by the said order the petitioner carried the matter in revision before the State Government under

section 259 of the Act. The Joint Secretary of Panchayat Department heard the parties and set aside the order of the Taluka Development Officer and the resolution passed by the Gram Panchayat on 8.2.2000 and directed that the charge of the office of the Sarpanch be restored to Margaben patel. The Upa-Sarpanch Shri Hematbhai Khodabhai filed the Special Civil Application No.5283/2000 on 2.6.2000. This Court stayed the operation of the order of the Joint Secretary in view of the decision of the Division Bench of this Court in Manubhai A.Patel vs State of Gujarat in Special Civil Application No.8551/99. That ad interim order was passed on 5.6.2000

4. Thereafter, Margaben Patel has filed Special Civil Application No.9112/2000 on the ground that the Joint Secretary has allowed her revision application only on the strength of the judgment of the Division bench of this Court but even if the order of the Joint Secretary is vulnerable on the ground of said decision of the Division Bench, Margaben can not be said to have lost the battle as the question of resignation of Dalsukbhai was still required to be decided and if it is held that his resignation was validly accepted by Margaben before the No Confidence Motion was purportedly passed by four members including Dalsukhbhai, the resolution can not be said to be validly passed in accordance with the provisions of the Act.

5. Both the matters have been heard together. After hearing the learned counsel for the parties, the Court finds that there is substance in the grievance being made by the petitioner in Special Civil Application No.5283/2000 that in view of the judgment of the Division Bench of this Court in 2000(1) GLH 423 in Manubhai F.Patel vs State of Gujarat the motion is required to be carried by majority of not less than 2/3rd of total number of members who are available excluding number of vacancies which are not filled up. By the said decision of the Division Bench the view earlier taken by the learned single Judge in Rambhai Joitaram Patel vs State of Gujarat in 1997(1) GLR 339 has been overruled. Hence, the decision of the Taluka Development Officer in so far as he took the view that number of vacancies are not to be taken into account while counting the total number of members was the correct view and the same was not required to be disturbed by the Joint Secretary in revision. Even then the question remains whether the resignation of Dalsukhbhai from the office of the Gram

Panchayat was validly accepted. The Joint Secretary did not think it fit to consider this question since he allowed the revision application on the other point about interpretation of "total number of members". Since that view is found to be incorrect as per the aforesaid decision of the Division Bench of this Court, the revisional authority is required to consider the question about the validity or otherwise of the resignation . The matter will, therefore, have to be remanded for hearing the parties on the said question. Since the question has vital effect on all concerned, the revisional authority will have to hear Dalsukhbhai on the question of resignation. Even otherwise, since the revisional authority is going to decide the question of legality or otherwise of the resolution dated 8.2.2000 it would also be in the fitness of things if the revisional authority is directed to hear all the members of the Gram Panchayat.

6. In view of the above discussion, the impugned order dated 29.5.2000 passed by the Joint Secretary, Panchayat Department, State of Gujarat in revision application No.10/2000 is hereby quashed and set aside and the matters are remanded to the revisional authority which after joining Dalsukhbhai and all the members of the Gram Panchayat shall hear the parties and decide the question of legality and validity of the resignation of Dalsukhbhai and also the validity and legality of the resolution dated 8.2.200 and pass appropriate orders in accordance with law as expeditiously as possible and preferably within one month from the date of receipt of the writ of this Court or a certified copy of this judgment, whichever is earlier. It will be open to the parties to raise all the available contentions before the revisional authority.

Rule is made absolute to the aforesaid extent only. There shall be no order as to costs.

19.9.2000 (M.S.SHAH,J)